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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re JADE M. et al.,

Persons Coming Under the Juvenile
Court Law.

B262881

(Los Angeles County
Super. Ct. No. DK09094)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

L.B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Philip L. Soto, Judge. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Tyson B. Nelson, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

L.B. (Mother) appeals from the juvenile court's jurisdiction findings declaring her children, Jade M., Ian M., and Neil B., to be persons described by Welfare and Institutions Code section 300, subdivisions (a), (b) and (j).¹ She claims the findings are not supported by substantial evidence. She also appeals from that portion of the disposition orders adopting certain case plan requirements she believes are "unnecessary and contraindicated." We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Detention

The Los Angeles County Department of Children and Family Services (Department) received a referral regarding 13-year-old Jade, 11-year-old Ian, and 9-year-old Neil on January 9, 2015 after their presumed father, Cesar B. (Father),² was arrested for domestic battery and Mother was held, but not arrested, for child abuse. A social worker was immediately dispatched to investigate and went to the police station, where the children were waiting, and spoke to one of the arresting officers. The officer stated that after receiving a domestic battery call at 4:25 a.m., he and his partner went to the trailer in which the family lived and found Mother outside. She reported that Father had punched her on the head then shoved her outside and locked the door. Mother said that the children were inside and had witnessed the incident. Father came outside and told the officers Mother was emotionally unstable. He reported he awoke to find Mother attempting to shave off his eyebrow. He grabbed the razor from her, pushed her out of the trailer and locked her out. He denied hitting her.

¹ All further statutory references are to the Welfare and Institutions Code.

² Father is not a party to this appeal.

The officers told the social worker they spoke to the children, who told them that their parents frequently fought and the fights sometimes escalated into physical altercations. After Father was placed under arrest, the children “spontaneously” asked the officers not to leave them home alone with Mother. They all said they were afraid of her because she frequently hit them when Father was not present. They said Mother had hit them with a metal back scratcher and a shoe within the last week.³ The officers observed “multiple older scratches on the arms, legs and stomach areas [of Ian and Neil], including what appeared to be a recent bruise [on] the right hand of Ian which appeared to have a similar [*sic*] to the metal fingers or ‘claw’ of the back scratcher.”

The social worker then interviewed the children. Jade said Mother did not hit her but frequently grabbed her by the hair when she was angry. Jade believed Father was a stabilizing influence and told the social worker, “My mom is not always in her right mind. She says many things that don’t make much sense. She is always suspicious of my dad. She tells us every day that dad is always cheating on her with other women. They are always getting into fights about that.” Jade said she was afraid of Mother and did not feel safe with her; Mother was “always angry and mean.” Jade also complained that Mother forced her to massage her every day, and Jade was tired of doing that.

Ian told the social worker he was tired of his parents fighting all the time. According to Ian, Mother constantly accused Father of seeing other women, and they screamed at each other. Ian reported that about two weeks earlier, Father hit Mother with his fist. Ian attempted to call 911, but Mother grabbed and twisted his forearm to prevent him from making the call. Ian said he felt safe with Father, who never hit the children,

³ The police report stated: “The children asked [officers] not to leave them alone with their mother. They said that she gets mad and ‘beats’ them. [Officer] Seibert asked how they get beat. They said that she hits them with a metal back scratcher in the shape of a claw and with a shoe. She hits them on the head, arms and legs. [Officers] were able to see scratches on the legs of Ian M. and on the upper back of Neil M. All three children expressed fear of being left alone with their mother. The children said they have been beaten as recent as yesterday, 01-08-15.”

but “Mom is always angry at us and runs around trying to hi[t] us with the back scratcher or her shoe.” Ian showed the social worker a bruise he said came from being hit with the metal back scratcher. He also complained about being forced to massage Mother, saying, “We can’t refuse or she gets very angry. Our sister ends up doing most of the massages because we’re better in getting away from her.”

Neil told the social worker that Mother had hit him many times with the metal back scratcher and a shoe. He said he did not feel safe with Mother if Father was not there to protect him. He asked the social worker if Father “stays in jail who is going to protect me from her. That’s why I told the police not to leave us with her.” He added that Mother did not spend money on the children, “she just buys stuff for herself.”

The social worker interviewed Mother, who did not deny or affirm trying to shave Father’s eyebrow off while he slept. She explained, “It’s a fetish thing. He has other parts of his body that I’ve shaved. He attacked me. He hit me on top of my head and threw me out and locked me out. He wouldn’t let me inside. So I used my cell phone and called 911.” She “strongly” denied hitting the children with a metal back scratcher and a shoe and stated they were “liars” if they said she did. She claimed Father brainwashed them to say those things.

Mother claimed she was a victim of spousal abuse, Father had been beating her for years, and she had taken out restraining orders against him in the past. She said she returned to him because she had no choice; she had no money. She complained that the “system has let me down. . . . I need an advocate, nobody advocates for me. I need assistance. . . . I need shelter. . . . I always return to the father because no one helps me with basic needs.” Mother also told the social worker she was seeing a psychotherapist, though she did not specify why. She denied having been diagnosed with a psychological disorder or having been prescribed psychotropic medication.

The social worker interviewed Father, who said Mother was a “nightmare” to live with. He believed Mother had been diagnosed with bipolar disorder, but she refused to take medication for it. The family had to keep moving because Mother “always causes crazy scenes wherever we live.” Father complained that it was “very unfair” that he was

arrested for domestic violence, because he never hit Mother. He said, “About 4 [a.m.] I was awakened because she had a razor over my eyebrow trying to shave it off. Sure I was angry. I never hit her, but I did throw her out of our home and locked her out. What was I suppose[d] to do? She’s crazy. I don’t know what to do with her.”

Father acknowledged that the children were exposed to frequent loud and angry arguments when Mother made crazy accusations against him. He felt bad for the children. He added that Mother “doesn’t hesitate to hit the children when angered.” She hit the children when she was angry, and the children were involved in a lot of afterschool activities in order to avoid her.

The social worker detained the children and placed them in shelter care.

B. Jurisdiction/Disposition

1. Section 300 Petition

The Department filed a section 300 petition on January 14, 2015. It alleged pursuant to subdivision (a), nonaccidentally inflicted serious physical harm, that Mother physically abused Ian on January 8 by striking him on the hand with a metal back scratcher. It also alleged, on January 2 and prior occasions, Mother struck both Ian and Neil on the head, arms, legs and stomach with a metal back scratcher and shoes, inflicting multiple scratches and causing Ian unreasonable pain and suffering. Ian and Neil were afraid of Mother and did not feel safe in her home due to the physical abuse. Father failed to protect both Ian and Neil from abuse by Mother. As a result of the abuse, the physical health, safety and well-being of all of the children were endangered. (Counts a-1, a-2.)

With regard to Jade, the petition alleged under section 300, subdivision (a), that Mother abused her by pulling her hair thereby causing her unreasonable pain and suffering. Jade was afraid of Mother and did not feel safe in her home due to the physical abuse. As a result of the abuse, the children’s physical health, safety and well-being were endangered. (Count a-3.)

The petition finally alleged under section 300, subdivision (a), that Mother and Father had a history of engaging in violent altercations in the children's presence. Father struck Mother on more than one occasion, and Mother failed to protect the children from him. On one occasion, Mother twisted Ian's forearm to prevent him from calling law enforcement. The parents' violent conduct endangered the children's physical health, safety and well-being. (Count a-4.)

The allegations under section 300, subdivision (b), willful or negligent failure to protect, were substantially similar to those under subdivision (a) in counts a-1 through a-4. The petition also included an allegation that Mother had mental and emotional problems, including bipolar disorder, for which she failed to take her prescribed medications. Her mental and emotional condition rendered her unable to provide regular care for the children and endangered their physical health and safety. (Count b-5.)

Under section 300, subdivision (j), the petition alleged that the physical abuse of each child placed the others at risk of physical harm and abuse. (Counts j-1 through j-3.)

At the hearing on January 14, 2015, relying on the information from the social worker's investigation,⁴ the juvenile court found a prima facie case for detention and ordered the children detained. It granted Mother and Father monitored visitation at least three times per week, three hours per visit.

2. Jurisdiction/Disposition Report

In a February 25, 2015 interview, all three children said that their parents often lost patience with them and resorted to corporal punishment or scolding and yelling. Jade recanted her statement that Mother pulled her hair. She did acknowledge that Mother hit the children with an open hand and objects and left marks on the children. Jade said she did not remember Mother hitting her on the head, and Mother never hit her with the metal back scratcher, but Mother did hit her brothers with the back scratcher because they did

⁴ The social worker's investigation was set forth in the Department's detention report.

not listen to her. Jade acknowledged witnessing several violent altercations between Mother and Father, in which they struck or shoved one another. She believed Mother's jealousy was the cause of their conflict.

Ian said he saw Mother hit Jade on the head with the back scratcher, leaving bumps on her head. He reported that both he and Jade were hit with a shoe and back scratcher, and that Mother "gets stressed and sometimes she calls me a vavaso (dummy)." Ian said that in the past he had tried to stop his parents from fighting and that he was afraid of Father when Father was angry. He also said that Mother "has a bad side and she grabs the shoe and her face gets red. . . . I'm not afraid of my mom or my dad; I want us to be together again."

Neil reported Mother hitting him with her hands or the back scratcher, causing bruises on his arms and legs. Neil disclosed he was afraid of his parents when they were angry, but otherwise he was not afraid and wanted to reunify with them. Neil also reported witnessing fights between his parents and being afraid of Father when Father was angry. He said they fight because Mother thought Father slept with other women. He said, "It makes me feel sad and scared because what if one of them gets hurt. One time I was trying to separate them" when they were fighting.

Mother denied striking the children with a shoe or the metal back scratcher. She claimed Father coached the children to make up the allegations of physical abuse. She said she never touched the children and they were not afraid of her; they kept asking her to take them home. She labeled the allegations, "a complete lie." Mother also accused Father of spousal abuse but denied being the primary aggressor. She denied being jealous and accused Father of fabricating that allegation. She acknowledged doing little to prevent the children from witnessing her altercations with Father. She said she had filed for a restraining order and dissolution of marriage, and that the separation from Father was permanent because he was committing adultery and failed to provide for the family. She added that she was attending domestic violence counseling and Parenting With Friends United.

Father reported Mother used corporal punishment on the children but denied the allegation he failed to protect them. He stated, “The children told me that she hits them; I didn’t see it because I was always at work but I told her not to mistreat them that way. I didn’t fail to protect them because I wasn’t present and I never saw marks on them and they never told me about it immediately.” He acknowledged previous domestic violence between the two and said, “I think I need to accept we failed in our relationship and call it quits for good. The[] way I see it I’m no good to my children dead or in prison and I think one or the other could end up happening if I go back with her. I’m afraid I could end up killing her and I’m also afraid she could end up killing me.”

Father reiterated his belief that Mother has bipolar disorder and her mental instability was the cause of instability at home. He said Mother’s cousin told him that she was bipolar but undiagnosed. According to Father, Mother was “paranoid and her mood swings are sudden and unpredictable.”

Mother denied having been diagnosed with any mental illness or being prescribed psychotropic medication. She claimed Father was “the one who’s really crazy and sick.”

The Department reported it held a meeting with Mother on February 10, 2015 to determine whether the children might be returned to her. The Department decided not to return the children based in part on “the fact that [M]other has been an aggressor during the parents’ altercations and [M]other’s failure to take responsibility for employing corporal punishment on the children. Further, . . . the Department [also] determine[d] it [wa]s likely both parents have been coaching the children on what to say or not say during visits.”

In the report, the Department reviewed the evidence supporting the allegations of the petition, including statements by the children and Father. It concluded there was sufficient evidence to support the allegations. It recommended Mother complete a parent education class, a domestic violence program with an anger management component, a psychiatric evaluation, conjoint counseling with the children, and conjoint counseling with Father, if appropriate.

The Department attached to its report documents Mother provided. Mother's evidence demonstrated she had enrolled in nonviolent parenting classes in June 2014 and as of February 28, 2015, she had completed 22 classes. Other evidence showed she had enrolled in a domestic violence support group on April 7, 2014 and had participated in 41 support group meetings. Finally, Mother submitted proof she had enrolled in an anger management program on February 9, 2015 and had attended two of 14 required sessions.

3. Jurisdiction/Disposition Hearing

At the March 4, 2015 hearing, Father pleaded no contest to slightly amended petition allegations against him.

The juvenile court conducted a contested jurisdiction hearing, however, as to the allegations against Mother and received into evidence the Department's detention report and its jurisdiction/disposition report. The juvenile court also received into evidence four documents from Mother: a letter from Mother's parent education program, a certificate of attendance for parent education classes, a letter verifying Mother was enrolled in a domestic violence support group and a progress report from an anger management program. The juvenile court received no other evidence.

At the hearing, Mother's counsel asked the juvenile court to strike the counts based on physical abuse, observing that Mother "vehemently denies striking any of her children at all with a metal back scratcher," and "at no time has physically abused her children." She also argued Jade "has clearly stated the mother did not" pull her hair.

Mother's counsel also asserted Mother denied being the primary aggressor in the domestic violence and Mother stated she was a victim, and she sought out services as a victim of domestic violence. Counsel further requested that the juvenile court strike the allegations that Mother suffered from bipolar disorder (count b-5), "as there's no evidence that Mother has any diagnosis" of mental illness.

The juvenile court sustained all allegations of the petition alleged against Mother except that she suffered from bipolar disorder (count b-5), which it ordered stricken. It

declared the children to be persons described by subdivisions (a), (b) and (j) of section 300.

The juvenile court found by clear and convincing evidence that removal of the children from the parents' custody was necessary for their safety, protection, physical and emotional well-being, and there were no reasonable means to keep them safe without removal.⁵ It declared them dependents of the juvenile court.

Regarding the case plan, Mother's counsel requested Mother not be ordered to complete a parent education program, since she had just completed one. Counsel also argued Mother should not be ordered to enroll in a domestic violence for perpetrators program. Instead, Mother asked that she be ordered to complete her anger management program and to continue in her domestic violence for victims program. Counsel also objected to a psychological assessment.

The juvenile court disagreed with counsel, noting "[t]his is still a situation where parenting classes need to be done, a psychological evaluation and taking all prescribed medication needs to be done. I don't see that we are going to get to a position where we can return [the children] to Mother safely if we don't do that." The juvenile court additionally found both Mother and Father were perpetrators of domestic violence.

The juvenile court ordered Mother to participate in individual counseling, with conjoint counseling at the discretion of the therapist. It ordered her to participate in a parent education program, psychological counseling and domestic violence group counseling for perpetrators. Finally, the juvenile court ordered unmonitored visitation once a week for two hours, with monitored visitation at least three times a week for three hours.

The juvenile court also told Mother and Father it had "taken care of services in order for the children to be back with you when we have the next court date in

⁵ After the juvenile court sustained the jurisdiction findings, Mother did not argue to the juvenile court that the children should not be removed from her care. Mother's counsel only sought to be heard on Mother's case plan.

September. We've got six months. I'm hopeful that you get the services done so we can try and see whether or not we can return the children safely to one or the other or maybe both on a split custody situation." It warned Mother and Father, however, "I don't want any disparaging remarks by you against the other spouse in front of the children. I'm going to be looking for that, Mom, Dad. So save yourself the trouble. I don't want to have to continue services because someone is calling someone a bad name in front of the children." The juvenile court advised Mother and Father to "have good visits. Those are going to be really key to return. Get the programs done. That's another key to return." If they did not do this by September, "we won't be in a position to return anyone to anyone."

Mother timely appealed.

DISCUSSION

A. *Standard of Review*

"We review the juvenile court's jurisdictional findings and disposition orders for substantial evidence. [Citations.] Under this standard '[w]e review the record to determine whether there is any substantial evidence to support the juvenile court's conclusions, and we resolve all conflicts and make all reasonable inferences from the evidence to uphold the court's orders, if possible.' [Citations.]" (*In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216, fn. omitted; accord, *In re Quentin H.* (2014) 230 Cal.App.4th 608, 613.) "Substantial evidence is relevant evidence which adequately supports a conclusion; it is evidence which is reasonable in nature, credible and of solid value. [Citation.] . . . [I]ssues of fact, weight and credibility are the provinces of the juvenile court. [Citations.]" (*In re R.C.* (2012) 210 Cal.App.4th 930, 941; accord, *In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) "The ultimate test is whether a reasonable trier of fact would make the challenged ruling considering the whole record. [Citations.]" [Citation.]" (*In re D.P.* (2015) 237 Cal.App.4th 911, 918; *In re Drake M.* (2012) 211 Cal.App.4th 754, 763.) Although "[t]he burden of proof at the jurisdiction phase in the

juvenile court is preponderance of the evidence” and “the burden of proof at disposition is clear and convincing evidence,” we nonetheless “review both jurisdiction findings and the disposition order for substantial evidence.” (*Christopher R.*, *supra*, at p. 1216, fn. 4; see *In re A.E.* (2014) 228 Cal.App.4th 820, 826.)

B. Sufficiency of the Evidence To Support the Jurisdiction Findings

1. Whether We Should Address Mother’s Challenge to the Jurisdiction Findings

Preliminarily, we address the Department’s contention that we need not consider Mother’s challenge to the sufficiency of the evidence to support the jurisdiction findings as to her. The Department argues that the juvenile court properly asserted jurisdiction over the children based on Father’s no contest plea to the petition and those unchallenged findings as to Father are sufficient grounds for affirming the declaration of dependency as to all three children. (See *In re I.A.* (2011) 201 Cal.App.4th 1484, 1491.) The Department is correct.

Nonetheless, we recognize “the outcome of this appeal is the difference between [Mother] being an ‘offending’ parent versus a ‘non-offending’ parent,” and “[s]uch a distinction may have far-reaching implications with respect to future dependency proceedings in this case and [Mother’s] parental rights.” (*In re Drake M.*, *supra*, 211 Cal.App.4th at p. 763.). We therefore agree with Mother’s argument that we should exercise our discretion to reach the merits of the challenged jurisdiction findings relating to her as those findings may have adverse consequences in this or subsequent proceedings: “[W]e generally will exercise our discretion and reach the merits of a challenge to any jurisdictional finding when the finding (1) serves as the basis for dispositional orders that are also challenged on appeal [citation]; (2) could be prejudicial to the appellant or could potentially impact the current or future dependency proceedings [citations]; or (3) ‘could have other consequences for [the appellant], beyond jurisdiction’ [citation].” (*Id.* at pp. 762-763.)

2. *Serious Physical Harm*

Mother contends substantial evidence does not support the juvenile court's finding she physically abused the children thereby placing them at risk of serious physical harm. Her argument is twofold. She challenges both the finding that she physically abused the children, as well as the finding that any such abuse placed the children at risk of serious physical harm.

In challenging the finding of physical abuse, despite her protestations to the contrary, Mother essentially asks us to reweigh the evidence.⁶ This we cannot do. “[I]ssues of fact and credibility are questions for the trier of fact.” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)

At the jurisdiction hearing, the juvenile court had conflicting evidence before it. It had Mother's adamant denials, Jade's statement that Mother did not pull her hair and Neil's recharacterization of Mother's discipline as mere “spanking” in support of Mother's position that there had been no physical abuse of the children. Against that evidence, the juvenile court properly considered the statements that all of the children made to the police officers and then again to the social worker almost immediately after the domestic violence incident, the bruise on Ian's hand that seemed to match the “claw” of the metal back scratcher, the reported scratches on Ian's and Neil's bodies, and Father's statements about Mother.

Given the statements made by the children concerning Mother's inappropriate corporal discipline that occurred well before any influence by either parent during

⁶ In her reply brief, Mother asserts the evidence presented to the juvenile court did “not meet the legal requirement to sustain the trial court's orders.” She claims this court should not “blindly seize any evidence in support of the [Department] in order to affirm the judgment.” She suggests the juvenile court's decision is “supported by a mere scintilla of evidence” and “need not be affirmed on appeal.” In actuality, however, Mother does not focus on the evidence relied upon by the juvenile court and does not demonstrate how that evidence is not “reasonable . . . , credible, and of solid value.” (*In re N. S.* (2002) 97 Cal.App.4th 167, 172.) Instead, she presents the evidence in the record most favorable to her largely ignoring the significant contrary evidence.

visitation was possible or before the children could reflect on the practical consequences of their disclosures, the juvenile court was entitled to credit the children's earlier statements; the juvenile court reasonably rejected the attempts by Jade and Neil to minimize Mother's conduct. The juvenile court also did not find Mother's denials credible in the face of all of the other evidence before it. The children's earlier statements, as well as those provided by Father regarding Mother's hitting and hair pulling, are substantial evidence supporting the juvenile court's findings that Mother physically abused the children.

Mother argues that even if the juvenile court believed the children's statements regarding hitting and hair pulling, her actions fell within her parental discretion to administer discipline to her children and did not amount to physical abuse within the meaning of section 300. She notes that "a parent has a right to reasonably discipline his or her child and may administer reasonable punishment" "with impunity." (*Gonzalez v. Santa Clara County Dept. of Social Services* (2014) 223 Cal.App.4th 72, 86.) Further, she claims her discipline did not constitute, or place the children at risk of, serious physical harm. We are not so persuaded.

Section 300, subdivision (a), does not define "serious physical harm." (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 138.) It provides only that "[f]or purposes of this subdivision, 'serious physical harm' does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury." (§ 300, subd. (a).) The statute provides that "a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent" (*Ibid.*) "Although there may be an 'I know it when I see it' component to this factual determination [of what constitutes serious physical harm] . . . parents of common intelligence can discern what injuries fall within its reach." (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 438.)

Case law suggests that serious physical harm may be found where physical discipline causes more than temporary redness, for example, where it causes substantial

bruising or laceration. In *In re Mariah T.*, *supra*, 159 Cal.App.4th at page 438, the court did not resolve whether striking an eight-year-old on the back and leaving a red mark constituted serious physical harm but did determine serious physical harm occurred where the parent struck a three-year-old child on the stomach and forearms, leaving deep purple bruises. In *In re David H.* (2008) 165 Cal.App.4th 1626, 1645, the court found serious physical harm where a seven-year-old child was struck with a belt or a cord, leaving welts, bruises and broken skin. In *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1472, pinching a child in anger, causing bruising which lasted four to 11 days and pain to the child, supported a finding the child was at risk of serious physical harm. In *In re A.E.* (2008) 168 Cal.App.4th 1, 4, the court noted “[s]mall children are not to be hit with hard objects, especially to the point of leaving black and blue bruises.”

In support of her claim that any injuries she inflicted on the children did not constitute serious physical harm, Mother relies on *In re Isabella F.*, *supra*, 226 Cal.App.4th 128. In *Isabella F.*, the mother and Isabella became involved in a physical altercation, and Isabella reported that her mother had hit her in the face, grabbed her by the neck and locked her in the bathroom. (*Id.* at p. 131.) A social worker observed what appeared to be fingernail scratches on Isabella’s face and a fingernail gouge mark on her earlobe. (*Id.* at p. 132.) The court found it undisputed that the mother acted inappropriately but found no substantial evidence supporting a finding Isabella suffered serious physical harm. (*Id.* at p. 138.) The court recognized, however, “that section 300, subdivision (a) may apply when a minor suffers less serious injuries but there is a history of repeated abuse. [Citation.] But that is not the case here, where Isabella reported this was an isolated incident, and there is nothing in the record to suggest otherwise.” (*Id.* at p. 139.)

Unlike *Isabella F.*, Mother’s abuse of the children was not an isolated incident. She had a history of physically abusing all three children. The juvenile court had ample evidence that Mother repeatedly hit the children with hard objects—a shoe and a metal back scratcher—leaving bruises, scratches and bumps. Jade and Ian both reported that Mother left marks on both Ian and Neil from striking them with the metal back scratcher.

Mother also grabbed Jade by the hair and, according to Ian, hit Jade on the head with the metal back scratcher leaving a bump. Mother took these intentional actions against the children when she was angry. Mother's use of hard objects to hit the children was routine.⁷ In fact, Father told the social worker that the children were involved in a lot of after school activities so that they could avoid Mother when he was away at work.

On the night of January 9, 2015, the children told both the police officers who arrived at their home and the social worker that they were afraid of Mother and did not want to be left alone with her. The youngest child, Neil, asked the social worker who was going to "protect" him from Mother if Father stayed in jail. We find all of this evidence is sufficient to support a finding that Mother subjected the children to repeated physical abuse, placing them at risk of serious physical harm. (*In re Isabella F.*, *supra*, 226 Cal.App.4th at p. 139; *In re A.E.*, *supra*, 168 Cal.App.4th at p. 4; *In re Mariah T.*, *supra*, 159 Cal.App.4th at p. 438.)

Mother also contends the evidence was insufficient to support findings under subdivisions (b) and (j) of section 300, "because the Department failed to introduce corroborated evidence showing that Mother was the cause of any of the marks on her children, with causation being a necessary element." She relies on *In re Rocco M.* (1991) 1 Cal.App.4th 814, 820, which holds that a finding under section 300, subdivision (b), requires: "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the minor, or a 'substantial risk' of such harm or illness." *Rocco M.* says nothing about "corroborated evidence" and, in any event, there was ample corroboration here. All three children gave similar accounts of Mother hitting the boys with a shoe and a metal back scratcher. Jade initially

⁷ We find Mother's use of corporal discipline especially troubling given that she presented evidence to the juvenile court that she had been attending "nonviolent parenting classes" since June 2014. By January 9, 2015, she had attended 15 classes. Despite having been educated on "the nonviolent child raising philosophy and practice," Mother continued to engage in corporal punishment leaving marks, bruises and bumps on all of her children.

reported Mother pulled her hair. Ian stated Mother caused the claw-shaped bruise on his hand. Neil stated Mother caused bruising to his arms and legs by hitting him with her hands or the metal back scratcher. All of the children reported serious ongoing domestic violence between Mother and Father. Mother cites no authority to suggest that further corroboration was required.⁸ The juvenile court's findings concerning section 300, subdivisions (b) and (j), are supported by substantial evidence.

3. Domestic Violence

As she did below, on appeal Mother claims that she was the victim of domestic violence, not the perpetrator, and “there was no sufficient evidence that she was the perpetrator of domestic violence sufficient to sustain an allegation in the Department’s petition against her.” We agree with the juvenile court that there was evidence both Mother and Father were perpetrators of domestic violence.

The children told the police and the social worker that Mother and Father frequently fought because Mother accused Father of cheating on her. The fights started as arguments and escalated to physical altercations, which the children had witnessed. Jade stated that she had witnessed several violent altercations between Mother and Father, in which they struck or pushed one another. The children described mutual combat. It is clear that Mother was both an instigator and participant in the domestic violence, not merely a victim.

It is well-established that exposure to domestic violence will support dependency jurisdiction. “““[D]omestic violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it.” [Citation.] Children can be “put

⁸ Mother seems to suggest that because no third party witnessed her hitting the children with hard objects and pulling Jade’s hair, the juvenile court did not have substantial evidence of physical abuse. Certainly, the children’s statements standing alone, if believed, supported the juvenile court’s findings.

in a position of physical danger from [spousal] violence” because, “for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg” [Citation.]’ [Citation.] Further, . . . “Both common sense and expert opinion indicate spousal abuse is detrimental to children.” [Citations.]’ [Citation.]” (*In re R.C.*, *supra*, 210 Cal.App.4th at pp. 941-942; see also *In re Heather A.* (1996) 52 Cal.App.4th 183, 194 [“domestic violence in the same household where children are living *is* neglect”].)

“Although many cases based on exposure to domestic violence are filed under section 300, subdivision (b) [citations], section 300, subdivision (a) may also apply.” (*In re Giovanni F.* (2010) 184 Cal.App.4th 594, 599.) “Domestic violence is nonaccidental,” and even when directed at a spouse or cohabitant, it can place the children “at substantial risk of suffering serious physical harm.” (*Id.* at p. 600.) Under such circumstances, it can serve as the basis for jurisdiction under section 300, subdivision (a). (*Id.* at p. 601.)

Here, Mother and Father had a long-standing history of domestic violence. (*In re T.V.* (2013) 217 Cal.App.4th 126, 134.) The children lived in a small trailer with their parents and were physically separated from them only by a curtain. The children regularly witnessed physical altercations between Mother and Father; the confrontations were not isolated events. The altercations were so violent that Father stated, “I’m afraid I could end up killing her and I’m also afraid she could end up killing me.”⁹

More than that, the fighting was so upsetting to the children that they tried to intervene to stop it. Ian said he had tried to stop them. On at least one occasion, 9-year-old Neil actually tried to separate his parents when they were fighting.¹⁰ During one fight, Ian attempted to call 911, but Mother grabbed and twisted his forearm to prevent him from making the call. Although the children had not thus far suffered serious

⁹ Neil reported waking up during the altercation on January 9 with the family’s trailer shaking.

¹⁰ The social worker reported that “Neil disclosed that he has at times attempted to stop the parents[] from fighting”

physical harm from the parents' domestic violence in these physical altercations, they ran a substantial risk of such harm because of their close proximity to the fighting and their attempts to stop it. (*In re R.C.*, *supra*, 210 Cal.App.4th at pp. 941-943.)

Mother relies on *In re Jesus M.* (2015) 235 Cal.App.4th 104 in support of her claim there is no substantial evidence to support the jurisdiction findings based on domestic violence. In *Jesus M.*, “[t]here was evidence to suggest the children were suffering emotionally, but rather than allege emotional abuse under subdivision (c) of section 300, [the Department] asserted jurisdiction under subdivision (b), presented vague evidence of emotional distress, and persuaded the court to assert jurisdiction in the absence of substantial evidence of a risk of serious physical harm. As the [juvenile] court found, Father had committed acts of domestic abuse years ago, but thereafter restricted his misconduct to harassing Mother and denigrating her to the children. Accordingly, as the court recognized, the evidence supported ‘emotional[], not physical[]’ injury. Section 300, subdivision (b), does not provide for jurisdiction based on “‘emotional harm.’” [Citation.]” (*Id.* at p. 112, fn. omitted.) For that reason, the appellate court found no substantial evidence supporting the jurisdictional finding based on domestic violence. (*Ibid.*)

Mother attempts to equate this case with *Jesus M.*, pointing to evidence that she and Father had separated, and she had obtained a restraining order against him. However, Mother had stated to the social worker that Father had been beating her for years, and she had taken out restraining orders against him in the past, but she kept returning to him because she had no money and no choice. A previous dependency referral had been deemed inconclusive and closed because the parents were separated and Mother was seeking dissolution. In addition, Mother had been participating in a program for victims of domestic violence for almost a year. Despite all this, at the time this case arose, Mother was still living with Father, and they were still engaged in physical altercations. Based on this evidence, the juvenile court was justified in refusing to rely on the restraining order and separation as proof the children were no longer at risk of physical harm from domestic violence. As we noted in *In re Christopher R.*, *supra*, 225

Cal.App.4th at page 1216, “A parent’s “[p]ast conduct may be probative of current conditions” if there is reason to believe that the conduct will continue.’ [Citation.]”

C. Sufficiency of the Evidence To Support the Disposition Order

Section 362, subdivision (d), provides: “The juvenile court may direct any reasonable orders to the parents . . . of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out this section, [including] . . . a direction to participate in a counseling or education program” Under section 362, subdivision (d), “[t]he juvenile court has broad discretion to determine what would best serve and protect the child’s interests and to fashion a dispositional order accordingly. On appeal, this determination cannot be reversed absent a clear abuse of discretion.’ [Citation.]” (*In re A.E.*, *supra*, 168 Cal.App.4th at p. 4; accord, *In re Daniel B.* (2014) 231 Cal.App.4th 663, 673.)

1. Domestic Violence

Mother first contends the juvenile court erred in ordering her to participate in a program for perpetrators of domestic violence rather than simply allowing her to continue in her anger management program. As discussed above, substantial evidence supports the court’s finding that Mother was a perpetrator of domestic violence, not merely a victim. Consequently, the court did not abuse its discretion in requiring her to complete a program for domestic violence perpetrators.

2. Psychological Counseling

Mother next challenges the court’s requirement that she participate in psychological counseling and take all prescribed psychotropic medication, based on the court striking the allegation she was unable to provide regular care for the children due to mental and emotional problems. Under section 362, subdivision (d), “[t]he case plan ordered by the court should be appropriate for each individual family based on facts relevant to that family, and should be designed to eliminate the conditions that led to the

dependency in the first instance. (*In re Daniel B.*, *supra*, 231 Cal.App.4th at p. 673.) However, “[t]he problem that the juvenile court seeks to address need not be described in the sustained section 300 petition. [Citation.]” (*In re Briana V.* (2015) 236 Cal.App.4th 297, 311; see *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006-1008.) That the trial court struck the allegation that Mother suffered from bipolar disorder (count b-5) does not foreclose the juvenile court from ordering Mother to obtain psychological counseling as a condition of reunification.

There was substantial evidence that Mother had mental health issues, though not a diagnosed mental illness, which contributed to the conditions that led to the dependency proceedings. The dependency proceedings were instituted after Father awoke to find Mother attempting to shave off his eyebrow while he slept. Jade told the social worker that night, “My mom is not always in her right mind. She says many things that don’t make much sense.” Father told the social worker that Mother “is a ‘nightmare’ to live with.” He believed Mother was bipolar, but she refused to take medication for it. He said, “‘We keep on moving from place to place because she always causes crazy scenes wherever we live. She always believes that neighbors[] are spying on her.’ He claimed she would engage in such ‘crazy’ behavior as taking photos of the license plates of tenants. This would get a lot of people very upset with her.” Father later told the social worker that Mother “needs help but won’t admit it; I’ve heard from her cousin she is bipolar but I don’t think she has ever been diagnosed. She thinks homeless men are undercover agents and has taken pictures of other people’s license plates . . . she’s paranoid and her mood swings are sudden and unpredictable.” For her part, Mother denied hitting the children, called them liars and claimed Father had brainwashed them. She also denied being possessive and accused Father of fabricating allegations against her.

This evidence supports the juvenile court’s conclusion that Mother had some undiagnosed mental health issues that, at least in part, caused the conditions leading to the dependency. In addition, her denial that she hit the children could prevent her from receiving the help she needed to remedy those conditions and reunify with the children.

Based on the evidence, requiring Mother to undergo psychological counseling was appropriate and “designed to eliminate the conditions that led to the dependency.” (*In re Daniel B.*, *supra*, 231 Cal.App.4th at p. 673.) Therefore, the juvenile court did not abuse its discretion in including this requirement in its disposition order. (*Ibid.*)

3. *Parent Education*

Mother also claims that since she had already completed a parent education course, “[i]t was error for the juvenile court to order [her] to participate in yet another parenting course.” Given that Mother was still regularly using inappropriate corporal punishment on the children and engaging in domestic violence in their presence, the juvenile court could reasonably conclude that repeating a parent education course was necessary to eliminate the conditions that led to the dependency. It did not constitute an abuse of discretion. (*In re Daniel B.*, *supra*, 231 Cal.App.4th at p. 673.)

4. *Monitored Visitation*

Finally, Mother challenges the juvenile court’s order that she have monitored visitation. Mother’s challenge to the visitation order, however, is now moot based on subsequently occurring events. (See *In re B.L.* (2012) 204 Cal.App.4th 1111, 1117.) On September 16, 2015, the juvenile court modified its previous visitation order after a hearing pursuant to section 388.¹¹

¹¹ On our own motion, we take judicial notice of the juvenile court’s minute order. (Evid. Code, §§ 452, subd. (d), 459; *In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1417; *In re Karen G.* (2004) 121 Cal.App.4th 1384, 1390.)

DISPOSITION

The order is affirmed.

BECKLOFF, J.*

We concur:

ZELON, Acting P. J.

SEGAL, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.